



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name

Susan Van de Water, M.D.

Respondent Name

Texas Mutual Insurance Company

MFDR Tracking Number

M4-17-0971-01

Carrier's Austin Representative

Box Number 54

MFDR Date Received

December 7, 2016

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "The examinee was referred for Certifying Doctor Examination by his treating doctor as his Treating doctor is not certified to perform a permanent impairment rating for the patient. The Geographical area ... is very limited with LOCAL medical doctors to ... perform Certifying Doctor Examinations and therefore, the network requirement should be waived in this Instance as this case needed to be certified by a medical doctor. This provider resides and practices in [redacted city], Texas and therefore should be an acceptable referral source as there are NO Texas Mutual certified doctors in this demographical area."

Amount in Dispute: \$950.00

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "Texas Mutual claim ... is in the Texas Star Network ... Texas Mutual reviewed its online Texas Star Network provider directory for the requestor's name and for its tax identification number, and found no evidence SUSAN VANDEWATER MD PA is a participant in that Network.

Further, Texas Mutual has no evidence the requestor, a non-network provider, received out of network approval to provide the service or treatment."

Response Submitted by: Texas Mutual Insurance Company

DISPUTED SERVICES SUMMARY

Date(s) of Service	Disputed Service(s)	Amount In Dispute	Amount Ordered
May 5, 2016	Referral Doctor Examination to Determine Maximum Medical Improvement & Impairment Rating	\$950.00	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all-applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305, sets out the procedures for resolving medical disputes.
2. 28 Texas Administrative Code §133.307, sets out the procedures for resolving medical fee disputes.

3. 28 Texas Insurance Code Chapter 1305 applicable to Health Care Certified Networks.

Issue

1. Did Susan Van de Water, M.D. obtain an out-of-network referral from the injured employee's treating doctor that was approved by the network pursuant to Section 1305.103?
2. Is this dispute eligible for medical fee dispute resolution pursuant to 28 Texas Administrative Code §133.307?

Findings

1. Susan Van de Water, M.D. filed this medical fee dispute to the Division asking for resolution pursuant to 28 Texas Administrative Code (TAC) §133.307 titled *MDR of Fee Disputes*. The authority of the Division of Workers' Compensation to apply Texas Labor Code statutes and rules, including 28 TAC §133.307, is limited to the conditions outlined in the applicable portions of the Texas Insurance Code (TIC), Chapter 1305. In particular, TIC §1305.153(c) provides that "Out-of-network providers who provide care as described by Section 1305.006 shall be reimbursed as provided by the Texas Workers' Compensation Act and applicable rules of the commissioner of workers' compensation."

Texas Insurance Code Section 1305.006 states:

An insurance carrier that establishes or contracts with a network is liable for the following out-of-network health care that is provided to an injured employee:

- (1) emergency care;
- (2) health care provided to an injured employee who does not live within the service area of any network established by the insurance carrier or with which the insurance carrier has a contract; and
- (3) health care provided by an out-of-network provider pursuant to a referral from the injured employee's treating doctor that has been approved by the network pursuant to Section 1305.103.

The requestor, therefore, has the burden to prove that one or more of the conditions outlined in the TIC §1305.006 were met in order to be eligible for dispute resolution. Dr. Van de Water argued that "The Geographical area ... is very limited with LOCAL medical doctors to ... perform Certifying Doctor Examinations." The submitted documentation does not support that the injured employee "does not live within the service area of any network established by the insurance carrier or with which the insurance carrier has a contract."

Texas Insurance Code Section 1305.103 requires that:

- (e) A treating doctor shall provide health care to the employee for the employee's compensable injury and shall make referrals to other network providers, or **request referrals to out-of-network providers if medically necessary services are not available within the network** [emphasis added]. Referrals to out-of-network providers must be approved by the network. The network shall approve a referral to an out-of-network provider not later than the seventh day after the date on which the referral is requested, or sooner if circumstances and the condition of the employee require expedited approval. If the network denies the referral request, the employee may appeal the decision through the network's complaint process under Subchapter I.

Dr. Van de Water has the burden to prove that she obtained the appropriate approved out-of-network referral for the out-of-network healthcare it provided. Review of the submitted documentation finds that Dr. Van de Water submitted no documentation to support that a referral was obtained from the treating doctor and approved by the network to treat the injured employee. The Division concludes that the requestor has failed to meet the requirements of Texas Insurance Code Section 1305.103.

2. The Division finds that the requestor failed to prove that the requirements of Texas Insurance Code Section 1305.006(3) were met in this case. Consequently, the services in dispute are not eligible for medical fee dispute resolution pursuant to 28 Texas Administrative Code §133.307.

DECISION

Based upon the documentation submitted by the parties, the Division has determined that this dispute is not eligible for resolution pursuant to 28 Texas Administrative Code §133.307.

Authorized Signature

_____ Signature	<u>Laurie Garnes</u> Medical Fee Dispute Resolution Officer	<u>January 11, 2017</u> Date
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YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, effective May 31, 2012, *37 Texas Register 3833*, **applicable to disputes filed on or after June 1, 2012**.

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division, within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form, or to the field office handling the claim.

The party seeking review of the MDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).